South Carolina House of Representatives

Legislative Update & Research Reports

Ramon Schwartz, Jr., Speaker of the House

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CONTENTS

OFFICE OF RESEARCH
Room 324, Blatt Building, P.O. Box 11867, Columbia, S.C. 29211, [803] 758-5096

Legislative Update

The Bills Just Keep On Coming

"Government, in the last analysis, is organized opinion. Where there is little or no public opinion, there is likely to be bad government, which sooner or later becomes autocratic government." Such was the opinion of William Lyon Mackenzie King, Prime Minister of Canada from 1921 through 1926. Public opinion in South Carolina has apparently moved members of the General Assembly to introduce the following bills.

Financial

Motor vehicle property tax refund (H.2173). This would provide for a partial refund of property taxes on a motor vehicle when the registration and license of that vehicle are transferred or surrendered.

Tax credits extended (H.2156). Currently business and industry can obtain a tax credit of $500 for each new full-time job they create. This credit is in effect for 5 years, starting the second year after the job is created. This bill would extend the tax credit to service-related industries.

Plant closing legislation (S.99). This bill would require employers to provide at least 15 days notice to the State Development Board before closing down a plant or factory. In addition, the employer and the Board would work together to see if an alternative use for the facility can be found, so as to keep people at work. If the plant does close, group health insurance on the workers must be continued for at least three months.

Update will publish a research report on plant closing legislation in the near future.

Justice

Raise drinking age to 21 (H.2110). This would set the legal drinking age for beer and wine at 21, effective September 14, 1986. See also H.2093. Under a federal law signed by President Reagan in July, 1984, failure by a state to set the drinking age at 21 will cost 5% of their federal highway aid in 1986 and 10% in 1987.

South Dakota has filed a lawsuit against Transportation Secretary Elizabeth Dole; the state seeks to prohibit her from withholding funds from states that do not comply with the drinking age law. According to canny South Dakota attorneys, the Twenty-first Amendment to the U.S. Constitution (repeal of prohibition) did not set a nationwide drinking age; therefore the choice was left up to individual states. Wisconsin's Attorney General Bronson La Follette has written South Dakota indicating that, while Wisconsin would not join in the suit at this time, the state was "supportive" of South Dakota's efforts. Watch this space for the latest developments.

Apart from the legal issue there is the question of money. The Office of Planning and Budgeting in Florida estimates that raising the legal drinking age from 19 to 21 will cost the state around $11 million a year in revenues and sales taxes. Of course, not raising the age could cost the state $72.8 million in federal highway funds over the next two years. The Wisconsin Revenue Department believes that raising the drinking age in that state would mean $9.8 million less a year in sales and excise taxes. However the Tavern League of Wisconsin says the loss would be higher: closer to $14 million a year. Of course, what would the loss be from accidents, medical costs, lost work and other related considerations?

No more Sunday liquor license (H.2201). Last session the General Assembly passed legislation that allows the Alcoholic Beverage Commission to issue twenty-four hour temporary permits for selling alcoholic beverages on Sunday. These permits can be granted only in localities that approve Sunday sales in a referendum. There was considerable controversy about the measure when it was passed, and time has not softened the issue. Some observers have noted that the "temporary" permits can be obtained on a regular basis, making them, in effect, permanent. This legislation (H.2201) would return to the old system--no temporary permits, and no public Sunday sale of alcohol.

Judge may deny parole (H.2113). Under provisions of this bill the judge who presided over the trial of a prisoner up for parole could veto that parole.

Execution by injection (H.2130). This legislation would replace death by electrocution with death by injection, which is considered by some to be a more humane and effective method.

The following states currently use injection as their method of execution: Arkansas, Delaware, Idaho, Illinois, Montana, Nevada, New Jersey, New Mexico, North Carolina, Oklahoma, Texas, and Washington. Two states provide options to lethal injection: firing squad in Idaho, hanging in Montana.

Transportation & Safety

Mandatory seat belts (H.2144, H.2187). Two bills relating to safety belts in automobiles. H.2144 would require drivers and all passengers to fasten their safety belts; H.2187 covers the driver and front seat passengers. Under H.2144 failure to use a safety belt cannot be considered negligence nor used to limit or mitigate damages from an accident. H.2187, on the other hand, does allow mitigation when a safety belt is not used.

To date three states have adopted mandatory seat belt laws: New York, New Jersey, and Illinois. The federal government has ordered states to adopt such laws before September 1, 1989 or a national Department of Transporation rule requiring automatic devices, such as air bags, will go into effect. For more information on seat belt legislation in other states, please see last week's *Update*.

No more stop signs (H.2150). This bill would allow motorists to consider stop signs "yield right-of-way" signs. There would no longer be the offense of "failure to obey a stop sign."

Government

Student registration (H.2101). This would permit a college student enrolled in a South Carolina college or university to register to vote in the county where he or she has a residence while attending school.

Polls open at 7 am (H.2129). Allowing people to vote earlier is a popular idea this session. At least four bills have been introduced thus far setting voting hours from 7 am to 7 pm: H.2001, H.2094, H.2129, and S.37. Of the lot H.2129 is different in setting the earlier hour for presidential election years. *Legislative Update* will publish a comparative listing of the various polling hours for the states in an upcoming issue.

Election of Family Court Judges (H.2138). This bill provides a method for the popular election of Family Court Judges, who are currently chosen by the General Assembly.

Energy & Environment

Sanitary landfill control (H.2131, H.2132). The first measure would prohibit a municipality from placing a sanitary landfill "within three miles outside" its limits. The second bill authorizes DHEC to come up with regulations for placing screening around landfills to minimize their impact on surrounding land and highways.

Tax Exempt Pensions: Win One, Lose One, AND A Correction to *Update* No. 3

First, a correction: in the *Legislative Update* for January 22, 1985, there was a brief report on retirement benefits excluded from taxes. *Update* erred in not reporting the full extent of South Carolina's provisions. All state pensions are completely exempt, and in addition, South Carolina has reciprocal arrangements with at least 22 other states to exempt state pensions. All federal civil service retirees, veterans with 20 years of service with the armed forces and persons over 65 drawing from pensions or annuities are allowed to exclude $1,200 from their gross income. A proposal (H.2020) would increase this amount to $6,000, and allow survivors of such persons to also take the exclusion. We regret omitting this information.

Rep. Kirsh will hold a subcommittee meeting on this subject this afternoon at 3:00 pm.

Since the January 22 *Update* two court rulings have been noted, both of them dealing with tax exemptions for pensions. According to *From the State Capitals*, one court has ruled in favor of the state to collect taxes on pensions; a second court has ruled against such collections.

In Maine the Supreme Judicial Court said state pension benefits are subject to state income tax. State employees had sought relief from taxes, saying that the 1942 law that established the retirement system exempted it from taxation. Not so the Court replied: that exemption was repealed when the legislature passed the state income tax law in 1969. The state constitution prohibits the legislature from surrendering the power of taxation.

And what of the Maine retirees? According to Rodney Scribner, state finance commissioner, some 20,000 of them will be affected. Those who withheld paying taxes on retirement may now have to pay the principle, interest, and possible penalties.

It is a different tale in Rhode Island, where the Supreme Court has ruled that police and firefighter pensioners are exempt from the state income tax. Not only that--the state might have to refund up to $14 million it has collected on the pensions.

As in Maine, the pensioners pointed to the law which created the pension. In this case a 1923 statute concerning state and municipal retirees made them "exempt from any state or municipal tax." The court ruled that this law took precedence over the 1971 state income tax law.

The decision has created a stir among Rhode Island budget officials. Gary Sasse, executive director of the Rhode Island Public Expenditure Council, estimates that any refund would "greatly reduce the $30 million state budget surplus" he had been expecting. If a refund is ordered by the Court, Sasse pouts, his group "would certainly recommend that the legislature pass a law that removes the exemption."

Lotteries in Other States

The idea of a state lottery has been proposed once again in the General Assembly. South Carolina could make as much as $59 million a year from a lottery, according to Scientific Games, a company which specializes in gambling operations. At present 23 states have lotteries. The first state to initiate such a program was New Hampshire, 20 years ago. In four states voters just approved a lottery in the November election: California, Oregon, Missouri and West Virginia.

There are moves in two states, Kentucky and Indiana, to enact lottery legislation--which would mean a constitutional amendment in each state. Currently the states have prohibitions against lotteries written into their constitutions. Kentucky plans to use the first $100 million raised for Vietnam and World War II veterans, the rest for education; Indiana supporters are interested in an alternative to raising taxes.

There are a number of disagreements over lotteries. Supporters claim they constitute a relatively painless source of income for the state, and point to booty raked in by lottery states. In 1980, for example, New Jersey had sales of over $300 million; prizes to winners amounted to $173,765,988; and the lottery's contributions to education and state institutions amounted to $145,876,569. [Figures from the 1981 New Jersey Lottery Annual Report] Similar reports come from other states: Pennsylvania 1983 lottery sales were over $1 billion, and in Maryland the lottery ticket proceeds to the state are the "third biggest source of general fund revenue." [*From the State Capitals*, November 19, 1984]

Opponents of lotteries worry about a state treasury depending so much upon an uncertain and unpredictable source of income. They also fear the influence of corruption that so much money could cause. Some object on moral or ethical grounds--and, it should be noted, the Federal Trade Commission has always regarded lotteries as inherently deceptive and unfair, because there are so few winners.

However, despite such moral and ethical questions, there is no doubt that state lotteries general some large figures, as the table below demonstrates.

State Lottery Sales and Proceeds, 1983

STATE	FY 83 GROSS SALES (000)	FY 83 NET PROCEEDS (000)	DISPOSITION OF PROCEEDS
Arizona	$ 75,000	$ 31,800	Local transportation; general fund
Colorado	138,300	NA	50% capital construction; 40% conservation trust fund; 10% parks
Connecticut	188,000	169,000	General fund
Delaware	30,100	11,000	General fund
Illinois	495,400	214,100	General fund
Maine	13,074	3,700	General fund
Maryland	462,800	198,200	General fund
Massachusetts	312,136	104,603	Cities and towns
Michigan	548,900	221,200	Primary and secondary education
New Hampshire	13,819	3,688	Education
New Jersey	693,100	294,900	Education and state institutions
New York	645,000	275,200	Primary and secondary education
Ohio	397,800	145,000	Primary and secondary education
Pennsylvania	885,400	355,400	Senior citizens
Rhode Island	43,000	14,700	General fund
Vermont	4,400	1,100	General fund (debt retirement and capital construction)
Washington	200,117	66,700	General fund

Sources: State Legislatures, 3/84; From the State Capitals, 12/84

Discovery Schedule for Reapportionment Lawsuit

The lawsuit of NAACP v. The State of South Carolina concerns the reapportionment of the state Senate. The case is now in the "discovery phase," a period of fact finding supposed to establish what is before the court. The schedule for these activities is presented below.

March 1	Plaintiff submits Proposed Stipulations
March 15	Defendants submit Proposed Stipulations and reply to Plaintiff's Stipulations
April 1	Plaintiff designates its witnesses
April 15	Defendants designate their witnesses
May 1	Plaintiff submits outline of anticipated discovery
May 15	Defendants submit outline of anticipated discovery
August 15	Discovery ends

Death With Dignity
(Living Will Legislation)

Editor's Note

Legislation concerning the "right to die" of terminally ill individuals is coming up for discussion in the S.C. House. H.2041, the "Death with Dignity" bill, was reported out of the Judiciary Committee on January 23, 1985--majority favorable, minority unfavorable. In order to provide House members with additional background information and knowledge on this subject, we are presenting this research report.

Summary

Medical technology has advanced to the stage where persons suffering the results of accident or the ravages of serious disease can be sustained for longer and longer periods of time. Even the death of patients with terminal illnesses can be postponed through the use of drugs, machines and treatments.

A growing number of persons question the across-the-board use of such technology. In what sense is a person in a complete coma "alive"? What good is served by prolonging the life, and therefore the agony, of someone in the grip of a painful, terminal illness? Does the use of this technology sometimes only lengthen the suffering of the patient, increase the grief of their loved ones, and deplete the finances of both families and communities?

"Death with dignity," or "Right to die" legislation would allow a terminally ill patient to order the physician not to use the extreme and expensive methods to prolong his or her life. Such legislation raises serious questions--ethical, moral, medical, and, not the least, legislative. This *Research Report* will survey the issue.

Difficult Questions: The Moral Aspect

Basically there are only three central points concerning this issue:

1. Is it ever right to remove or withhold life-sustaining measures or systems from a person?

2. If it is proper, when should life-sustaining measures or systems be withheld or removed?

3. Who should have the authority to permit or order the removal?

Persons who answer "No" to the first question believe that medical personnel must do everything possible to continue life. For those who take this view, naturally questions two and three are irrelevant, since life-sustaining measures should never be removed and no one has the right to remove them. Only death (more or less naturally) ends the treatment.

There is growing sentiment, however, that "biological" death and "human" death are not the same thing. An irreversibly brain-damaged person, doomed to a vegetative state, can be kept alive indefinitely on a life-support system. Supporters of right-to-die legislation question whether this is truly "life" as we know it.

Governor Richard Lamm of Colorado spoke out last year on what he felt was the abuse of such systems. At the time Governor Lamm said that there comes a time when "we all have a duty to die." The remark caused a furor in the press but, as the Governor notes in an article in *The New Republic*, he received almost 3,000 letters in support of his position. One woman, whose mother had been on a system for months, summed up the frustration and anguish: "These machines are manacles, not miracles."

Some questions might be raised about the religious aspects of right-to-die legislation. Isn't this a form of euthanasia, or so-called "mercy killing?" It is important to draw a distinction here. Euthanasia is an active, deliberate step in which the person is killed. No supporters of right-to-die legislation have advocated euthanasia; certainly no religious figures would.

The religious basis for right-to-die legislation is best summed up by the traditional Catholic teaching that we must make a distinction between "ordinary" and "extraordinary" means of preserving life. Medical personnel have the duty of providing all "ordinary" means to save a life, but no one has a moral obligation to use extraordinary means to prolong life--means which are excessively burdensome or offer no reasonable hope of benefit to the patient. As Pope John Paul II said:

> When inevitable death is imminent in spite of the means used, it is permitted in conscience to refuse forms of treatment that would only secure a precarious and burdensome prolongation of life .... [refusal] is not the equivalent of suicide; on the contrary it should be considered as an acceptance of the human condition.

Difficult Questions: The Legal Aspect

Patients who have wished to claim their right to "death with dignity" have sometimes been thwarted by doctors who refuse to stop treatments, or unhook support systems. The families of comatose patients, such as Karen Ann Quinlan, have also found the medical authorities unwilling to discontinue life-sustaining systems, even through there is absolutely no chance of even minimal recovery.

The fear, of course, is of legal action: malpractice suits at the least, and possibly even charges of homicide. Because of this, some doctors have expressed the view that once a life-sustaining system has been turned on, they are medically and legally unable to turn it off, even if the patient commands it, even if the family desires it. As John Paris and Richard McCormick note: "even though no physician has ever been prosecuted for removing a respirator from one whose death was imminent and unavoidable, still there exists a pervasive fear of liability in the medical world. This fear spawns a reluctance to discontinue treatment even when the patient can derive no possible benefit from it."

Doctors maintain they need statutory support in the form of death determination laws and right-to-die legislation.

The first item has already been passed by the South Carolina General Assembly. Last session the Legislature passed Act 339 which provides two criteria for determining death. A person is dead if there is irreversible cessation of either: 1) circulatory or respiratory functions; 2) all functions of the entire brain, including the brain stem.

The whole brain is considered because the upper brain is responsible for our "conscious" or "higher" operations, such as the senses, use of the muscles, thinking; the lower brain is responsible for automatic functions of the body such as breath, heart-beat and circulation.

These criteria are becoming standard across the country. For example, the Minnesota Supreme Court recently ruled that courts in that state could order the discontinuation of life-sustaining procedures, even if it resulted in the patient's death, if the brain was already dead.

Supporters of right-to-die legislation feel that it is essential, because without its protection, the medical profession will be afraid to cut off life-support systems in any situation.

Right-to-Die and Living Wills: A Distinction

A distinction should be made between right-to-die legislation per se and living wills laws. Living wills are a special kind of right-to-die legislation. An individual must specifically command his physician not to take extraordinary means to prolong his or her life. In other words, the patient instructs the doctor, in advance, to allow death to occur naturally.

However, in the case of someone like Karen Ann Quinlan, the patient may not have prepared such a document. In that case, under the broader heading of the "right-to-die," her parents petitioned the court to have life-support systems disconnected, even though there was no expectation that she would survive the move.

In similar cases parents or guardians have asked the courts to support their use of the doctrine called "substituted judgment"--that is, what the affected person would want done in the particular case. "Substituted judgment" is not a part of proposed South Carolina legislation; however, the distinction needs to be made to keep debate on this issue clear.

Living Will Legislation Nationally

California was the first state to pass a law about this subject. Its 1976 statute, entitled the "Natural Death Act," recognized the right of an adult to have written instructions for the physician to withhold or withdraw life-sustaining procedures in the event of a terminal condition. The document goes into effect under the following conditions:

1) Certification of terminal condition by two physicians;
2) Attending physician must determine the validity of the document;
3) Death must be "imminent" in the judgment of the physician.

Since that time twenty two states and the District of Columbia have passed similar legislation. These include Alabama, Arkansas, North Carolina, Virginia, Florida, Georgia, Louisiana and Mississippi.

In Kansas, to allay fears that living will legislation was the first step towards euthanasia, the following proviso was added: "Nothing in this act shall be construed to condone, authorize or approve mercy killing or permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying as provided in this act."

The Kansas statute also addressed a possible problem with living wills: if someone has not prepared such a declaration, does that imply that they want to be kept alive by extraordinary means? The reasonable answer is "no," and the Kansas law avoids an "implied consent" situation:

> This act shall create no presumption concerning the intention of an individual who has not executed a declaration to consent to the use or withholding of life-sustaining procedures in the event of a terminal condition.

South Carolina Legislation

In 1977 a Natural Death Act was introduced by the Committee on Aging; this bill was modeled on the California Natural Death Act. The bill failed to pass that session. In 1979 another bill, allowing for an optional procedure for withdrawal or withholding of life sustaining equipment in case of terminal illness was re-introduced by the Committee on Again. It gained substantial support from a number of organizations and passed the Senate, but failed in the House in 1980.

During the 1981-82 session two bills were introduced in the House and both remained there without passing. No bills on the subject were introduced during the 1983-84 session.

Legislation has been introduced this session. Known by its short title of the "Death with Dignity Act," it proposes the following points:

1. Allow attending physician to withhold or discontinue life sustaining procedures if (1) patient requests that dying not be prolonged and (2) non-attending physician confirms terminal condition.

2. Declaration must (1) state desire not to use procedures to prolong dying, (2) state understanding of authorization, and (3) be signed by two witnesses.

3. The form and language of the declaration is written into the legislation.

4. The declaration can be revoked by (1) destruction or mutilation of the form, (2) signed revocation statement, (3) verbal expression.

5. Provides immunity for physicians acting under the terms of the declaration.

6. Failure of a physician to carry out terms of a declaration constitutes unprofessional conduct.

7. Declarations do not constitute suicide.

8. No one can be required to sign a declaration in order to receive insurance or treatment.

9. Prohibits construction of the act to authorize mercy killings or any deliberate acts or omissions to end life.

Conclusion

Living will legislation seeks to give patients the legal right to choose what will be done to care for them. Supporters of such legislation feel the patients already have such a moral right. The general purpose of these wills are to recognize the dignity and natural moral rights of the person, and his or her right to decide to what extent, if at all, physicians may treat their diseases.

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